

Fair Political Practices Commission

Memorandum

To: Chairman Getman, Commissioners Downey, Knox and Swanson

From: John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: September 2002 Work Plan Revisions

Date: August 26, 2002

I. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.¹ The plan provides for quarterly work plan revisions. Attached is the September update to the regulatory work plan for calendar year 2002 reflecting changes during the third quarter. Items that were considered by the Commission consistent with the existing plan have not been noted. Completed items are indicated on the chart by shaded rows in the chart.

Currently, there are 31 items on the regulation calendar under four category headings (attached). Section II of the memorandum discusses recommended revisions to the calendar. Proposed revisions will be set forth under these headings, designated with the same item number. Also attached is a letter from Lance Olson dated August 22, 2002, which pertains to member communications (Item 13, Appendix A) and a letter from Colleen C. McAndrews dated August 5, 2002, which pertains to campaign filing schedules (Item 21, Appendix B).

II. PROPOSED REVISIONS

A. Campaign/Lobbyist Regulations

Item 1. Regulations 18450, 18450.1, and 18450.2. Advertising Disclosure: (§§ 84501-84510) These provisions are surviving provisions added by Proposition 208. The purpose of the advertising disclosure rules is to inform voters of the “big money” behind political advertisements. However, interpretive issues exist with respect to whether advertisements for or against a ballot measure are subject to §§ 84502-84504 or § 84506 (governing independent expenditures), or both. Additional issues that may be clarified by regulation: what types of advertisements are subject to the rules; are there exceptions; clarification of the term “cumulative contributions” as defined in § 84502; the treatment of independent expenditure advertisements

¹ See staff memorandum dated November 14, 2001, *Approval of Regulation Calendar for the Year 2002*.

under § 84506; the specific content of the disclosure; and under what circumstances a disclosure must be amended.

CHANGE: Commission staff has prepared three interpretive regulations for the Advertising Disclosure rules. However, consistent with staff's recommendation, the Commission adopted only regulation 18450.1. Staff recommended (and the Commission agreed) that consideration of regulations 18450 and 18450.2 should be deferred until the status of legislative changes to the advertising disclosure provisions were certain.

Item 5. Regulation 18452 – CalPERS' Reporting Requirements: § 84225 requires candidates for the Board of Directors of CalPERS to file certain campaign reporting statements. Regulation 18452, as directed by statute, sets forth the filing schedule and describes the contents of those statements. CalPERS prepared an election schedule that provided for runoff elections under certain circumstances, requiring amendment of regulation 18452, since the regulation makes no provision for the filing of statements required by law during runoff election cycles. In addition, it is unclear where these candidates file.

CHANGE: The proposed amendments to regulation 18452 were presented to the Commission for Pre-Notice Discussion in June of 2002, and were originally calendared for adoption in August of 2002. The amendments were intended to accommodate CalPERS' newly formulated election schedule, which had been altered to include runoff elections in the event that no single candidate obtained a majority of the votes cast. However, on June 14, 2002, the Sacramento Superior Court ruled, among other things, that the CalPERS regulation establishing the runoff elections was invalid, thus nullifying the regulation that the proposed amendments to regulation 18452 were intended to accommodate. The CalPERS Board elected to delay a decision regarding whether or not to appeal the court's decision until at least August. CalPERS informed Commission staff that there would be no runoff election during this year's election cycle. Therefore, the proposed amendment is moot.

Item 9. "Independent Expenditure" (Regs. 18225.7 and 18225.8); § 82031. Regulation 18225.7 defines expenditures "made at the behest of" a candidate, which include coordinated expenditures treated as contributions under the Act. Staff offers for pre-notice discussion an extensive revision of the current regulation, to more clearly and specifically define conduct that constitutes coordination. Another proposed regulation, regulation 18225.8, deals with committees not controlled by candidates.

CHANGE: An additional Interested Persons Meeting was held on August 2002.

Item 11. Regulation 18572.2, Lobbyist Contributions (§ 85702/18572): The section prohibits contributions by a lobbyist to elected state officers or candidates for elected state office if the lobbyist is registered to lobby the agency of the recipient, or the agency to which the candidate seeks election. The proposed regulation deals with the standards applicable to the ban on acceptance of contributions.

CHANGE: The Commission considered the proposed regulation at the June 2002 Commission meeting but did not approve the language to be noticed for adoption.

Item 13. Regulation 18531.7. Member Communications: (§ 85312) Scope and definition of terms. Section 85312 provides that certain payments for communications to “members, employees, shareholders, or families of members, employees, or shareholders of an organization” are not contributions or expenditures. While the Act currently provides a definition for the term “immediate family” pertaining to conflict of interest and disclosure rules, the term “families” as used in § 85312 may be interpreted more broadly. Similarly, other undefined terms of this section including “member,” “employee,” “shareholder,” “communications,” and “organization” warrant examination and definition by the Commission.

CHANGE: The member communication regulation was adopted by the Commission as a permanent regulation in August 2002. However, subsequent to the adoption of the regulation, we received a letter dated August 22, 2002, from Lance Olson (Appendix A) on behalf of the AFL-CIO petitioning the Commission to amend regulation 18531.7 pursuant to Government Code Sections 11426 and 11427 of the 1974 APA. The Commission will consider whether to grant or deny a petition to amend regulation 18531.7 in September 2002, and if granted, the Commission would consider the proposed amendments in October 2002. The petitioner also requests that the Commission extend the effective date of regulation 18531.7.

Item 20. Emergency Regulation 18535 -- Restrictions on Contributions between State Candidates. The proposed emergency regulation seeks to clarify questions that have arisen concerning the interpretation of section 85305, which limits contributions between state candidates. The regulation provides that the applicable limit with respect to section 85305 is \$3,000 across-the-board, as opposed to \$3,000, \$5,000 and \$20,000 depending on the office of the recipient. The proposed regulation also addresses to which committees the limit applies and when the limit takes effect.

CHANGE: New item. Emergency regulation adopted at the August 2002 Commission meeting. Permanent adoption set for November 2002.

Item 21. Requested Amendment (August 5, 2002 letter from Colleen C. McAndrews Appendix B) --Regulation 18116 -- Reports and Statements; Filing Dates. An issue concerning filing late contribution reports (“LCRs”) on the weekend arose at the December 2001 meeting during consideration of permanent adoption of Proposition 34 regulations 18539 (online disclosure of contributions) and 18550 (online disclosure of independent expenditures). Regulation 18116 provides that when reports filed under the Act are due on a Saturday, Sunday, or official state holiday, the deadline is changed to the next working day, except for late contribution reports and late independent expenditure reports. The weekend extension applies to the new \$1,000 and \$5,000 reports added by Proposition 34, but does not apply to the traditional late contribution reports.

Colleen McAndrews of Bell, McAndrews, Hiltachk and Davidian submitted two letters to the Commission on March 8, 2002 and August 5, 2002 suggesting that the weekend extension be applied to traditional LCRs. Ms. McAndrews suggested that traditional late contribution reports should not be excepted out of the next regular business day extension in regulation 18116. She suggested that weekend 24-hour reporting could be preserved for LCRs on the final weekend before the election, but that prior weekends could be excepted out. She pointed out that many local city clerk's offices are not open on the weekends to receive and make use of the late reports. Though treasurers can put off opening their mail until Monday, and thus avoid "receiving" contributions over the weekend, often fundraisers are held on Fridays and Saturdays where campaign staff collect contributions on site, resulting in LCRs due on Saturday or Sunday. Another minor issue that has been raised concerning late reports is a one-day discrepancy between the end of the traditional late contribution report period (§§ 82036 and 84203) and the 90-day election cycle period added by Proposition 34 (§§85204 and 85309). The late contribution report period does not include the day of the election, but the 90-day election cycle reporting period does. Eliminating this discrepancy, however, would require a legislative change.

REQUESTED CHANGE: In her August letter, Ms. McAndrews requests that the new item be considered for emergency adoption in October. However, staff recommends that the item be considered next year. Unlike the emergency regulation 18535 which *codified* existing Commission advice for the pending election, the proposed *change* to regulation 18116 would be a change to existing law that could create confusion and invite unsupported enforcement complaints. Delaying consideration of this item until next year would also allow staff to more fully analyze potential impacts of the change.

B. Conflict of Interest

Item 2. Conflict of Interests and General Plans: Some agencies are viewing general plan amendments as coming with the purview of "zoning or rezoning" decisions under subdivisions (a)(1) and (a)(6) of the regulation. Because general plans cover the entire jurisdiction, officials of these agencies believe they cannot participate in such decisions unless the "public generally" or "legally required participation" exceptions apply. This results in substantial difficulties, in that all of the members of a governing board of an agency may be unable to participate in some of the most fundamental decisions affecting the entire jurisdiction. Staff is anticipating regulatory action involving clarification of and refinement to the conflict of interest rules as applied to these types of decisions. This project will also include consideration of the "segmentation and bifurcation" procedures referred to in Commission advice letters. The procedure is used when a governmental decision may be "segmented" into a series of decisions in which a public official may have a conflict in one decision in the series but not others.

CHANGE. On July 12, 2002, Commission staff conducted an Interested Persons meeting related to this topic. The meeting was sparsely attended. Consequently, staff is proposing further fact-gathering on the topic and pre-notice discussion in November.

C. 2002 Planning Objectives

Item 1. Enforcement policy review. Enforcement policy discussions focusing on a substantive area, e.g. laundering, conflicts of interest and reporting violations. During those discussions, the staff and Commission would review the elements of a violation; whether our enforcement in this area would benefit from changes in our regulations or advice; the Commission's past treatment of similar violations; the factors weighed in deciding whether to prosecute and if so, whether to proceed administratively or civilly; and the appropriate fine level, including a discussion of mitigating and aggravating factors that should be considered for each type of violation. The goal of each discussion would be to emerge with a statement of Commission policy with respect to those types of violations, with the understanding that staff must continue to have great flexibility and discretion in dealing with the differences in individual cases. Implementation would follow in accordance with a schedule approved by the Commission.

CHANGE: The Enforcement Division has been unable to present this item.

D. Miscellaneous Items

NO CHANGES.

Attachments